

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 95-234

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. Section Adm 9.04 provides that “...every sealed bidder or sealed proposer under s. 16.75, Stats., in connection with transactions in excess of the amount indicated in s. 16.75 (1) (c), Stats., or a vendor where bidding is waived under s. 16.75 (6) (c), Stats., shall pay contract administrative fees as provided in s. Adm 9.05.

However, under s. 16.702 (1), Stats., as created by 1995 Wisconsin Act 27, the Department of Administration is required to prescribe by rule a contract administration fee to be paid for each state fiscal year by providers of materials, supplies, equipment or contractual services to agencies. Contract administration fees may be assessed on the basis of different total dollar volume sales by providers to agencies within the fiscal year in which the fee is assessed or the preceding fiscal year.

Under s. 16.702 (2), Stats., no person may provide any material, supplies, equipment or contractual services unless the person has paid to the department the fee prescribed by the department for the fiscal year in which the material, supplies, equipment or services are provided.

Thus, there is no statutory authority for the department to impose a contract administration fee on every bidder or proposer. Only a provider (vendor) who is awarded a contract can have a contract administration fee imposed. Therefore, the entire rule should be reviewed and rewritten, where necessary, to provide that the contract administration fee is imposed only on those entities that actually provide materials, supplies, equipment or contractual services to state agencies.

b. Under s. Adm 9.09, the fee for any subscription service provided by the department “shall not be more than \$100 per year.” However, under s. 16.701, Stats., the department may provide a subscription service to prospective vendors and “the department shall charge a fee for any such service. The department shall prescribe the amount of the fee by rule.” It is inadequate to state that the fee will “not be more than \$100”; the rule must state the actual amount of the subscription service fee.

2. Form, Style and Placement in Administrative Code

a. Throughout the rule, when a series of subsections is cited, “to” should replace “through.” For example, see s. Adm 9.05 (5).

b. Section Adm 9.07 (intro.) should be rewritten to delete “shall be exempted” and replaced with “are exempt.” Also, “classes” should replace “class.”

c. In s. Adm 9.07 (1), “; and” should be deleted. In s. Adm 9.08 (1) (a), a period should replace “; or”. [See s. 1.03 (intro.), Manual.]

d. In s. Adm 9.08 (2), “also” should be deleted. The word “an” should replace “such.”

e. In s. Adm 9.09, “department” should replace “Department.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

In s. Adm 9.05 (7), “of at least \$100” should replace “equal to or greater than the fee provided by sub. (2).”